

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
and Nora Mead Brownell.

American Electric Power Service Corporation

Docket No. ER01-2163-001

ORDER GRANTING REHEARING

(Issued October 25, 2001)

On August 20, 2001, DPL Energy, Inc. (DPL) filed a request for rehearing of the Commission's order issued July 26, 2001 (July 26 Order) in this proceeding¹. In the July 26 Order, the Commission accept for filing an unexecuted Interconnection and Operation Agreement (IA) between Indiana Michigan Power Company² and DPL. However, the Commission denied DPL's request for interest on the transmission credits it will receive to repay it for system upgrade facilities.

For the reasons set forth below, we grant the request for rehearing. This order will benefit customers by minimizing interconnection costs, which encourages investment in new generation and makes markets more competitive.

I. Background

On May 30, 2001, AEP filed an IA for DPL's Montpelier Generating Station, located in Wells County, IN. The IA accepted by the July 26 Order sets forth the terms and conditions governing the interconnection of DPL's generating facilities and AEP's transmission system. The IA provides that DPL is responsible for the cost of the facilities necessary to interconnect the generating facility to AEP's transmission system and is initially responsible for system upgrades necessary to remove overloads resulting from connection of the facilities to the network. However, the IA also provides that DPL shall

¹American Electric Power Service Corporation, 96 FERC ¶ 61,136 (2001).

²Indiana Michigan Power Company is an operating company of the American Electric Power System (AEP), which provides transmission service under AEP's OATT.

be eligible for a credit against the rates it pays when it ultimately takes the delivery component of transmission services, to reimburse it for the cost borne by DPL for these system upgrades. The IA requires DPL to finance a total of \$6,015,000. In the July 26 Order, we held that DPL is not entitled to interest when it receives the credits.

II. DPL's Request for Rehearing

DPL requests rehearing of the July 26 Order, arguing that AEP should be required to reimburse DPL for system upgrades for which DPL has already paid, plus interest. DPL contends that the Commission failed to provide a reasoned justification for its position in denying DPL interest. It argues that AEP is constructing system upgrades that benefit AEP's transmission system and notes that these costs will be eventually be rolled into AEP's rate base. DPL therefore believes that, by not paying interest on system upgrade-related transmission credits, AEP receives a windfall in financing costs that it would otherwise have to pay. DPL states that, when constructing system upgrade facilities, DPL advances AEP the cost of the system upgrades, so AEP must reimburse DPL for that money.³ Therefore, DPL concludes that, just as a bank is entitled to interest on loans, DPL is entitled to interest on the loan it provides to AEP.

DPL also characterizes the argument that system upgrades would not have been built "but for" DPL's request for interconnection as irrelevant for purposes of determining whether interest should be paid. DPL states that AEP has an obligation to provide interconnection and transmission service to all entities requesting such service. It points out that AEP will own the system upgrades and will benefit from the upgrades by being able to accommodate requests for service from additional customers. DPL argues that while the upgrades may not have been constructed "but for" DPL's request, all users of the transmission system will benefit from the added reliability and stability the upgrades provide to AEP's transmission system.

DPL also disagrees with the July 26 Order's reasoning that generators should not be entitled to an interest adjustment because the generators determine (a) the location of the facility and (b) whether the facility is used for base-load or peaking. DPL maintains that a generator cannot place its facility anywhere it chooses, nor can a generator construct any type of generating unit it wishes. DPL asserts that the market dictates the location and type of facility that is needed. According to DPL, the primary factor driving

³In Consumers Energy Company, 95 FERC ¶ 61,233, reh'g denied, 96 FERC ¶ 61,132 (2001), the Commission clarified that credits are required for all network upgrade costs, including those incurred to remedy short-circuit or stability related problems.

the cost of system upgrades is the current condition of the transmission system, not the location or type of generator.

III. Commission Determination

The Commission's policy is to require generators to pay for system upgrades initially, but that they ultimately receive transmission credits for all such upgrades when the delivery component of transmission service is taken. In the past, we have not required electric transmission providers to pay interest on credits for system upgrades. We explicitly said no to interest in the July 26 Order.

In the July 26 Order, the Commission merely reiterated its policy in American Electric Power, 94 FERC ¶ 61,166 at 61,595 (2001), (AEP II) to not require interest. We said in AEP II that the intervenor "does not explain how AEP could make use of the money advanced by a generator to pay for system upgrades, and has made no showing that such payments are held by AEP for any significant length of time, i.e., that there is any significant time lag between payments made by a generator to a transmission provider and the obligations of a transmission provider to reimburse equipment suppliers and firms that provide construction services."⁴ Upon reconsideration, we find at this time that whether or not the transmission provider holds generation payments for any length of time should not be the determining factor as to whether interest should be paid. We now find that until the conclusion of the generic proceeding discussed below, the addition of interest in connection with system upgrades on an interim basis is appropriate, for the following reasons. First, failure to adjust credits to reflect interest would impose on generators the financing costs, which may be significant, depending on the amount of system upgrade costs and the length of time between the date on which the generator pays for the facilities and the date when it depletes the credits. This additional cost for new or expanding generators may unduly impede capacity additions. More importantly, if interest is due, that cost should be borne by its ratepayers (rolled in) for the same reason the ratepayers pay for the underlying construction costs, i.e., they all benefit from the upgrade. Making the new generator bear the interest costs while all ratepayers bear the underlying construction costs on a rolled-in basis is inconsistent.

Therefore, until the conclusion of the generic proceeding discussed below, we find that it is unjust and unreasonable to deny interest. In the interim, until that proceeding reaches a final conclusion, we find that the transmission credits should include interest on the monies paid. Interest must be calculated in accordance with section 35.19a(a)(2) of our regulations.

⁴94 FERC at 61,595.

While we adopt this policy now, our decision is interim in the following sense. The Commission intends in the near future to reevaluate its pricing policies for electric interconnections in a generic proceeding. Our decision today does not prejudice the outcome of the future proceeding on the issue of interest on credits or any other issue. We will then reconsider the interest issue based on all relevant facts and circumstances.

The Commission orders:

The request for rehearing is granted, as discussed in the body of this order.

By the Commission. Commissioner Breathitt dissented with a
separate statement attached.

(S E A L)

David P. Boergers,
Secretary.

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Breathitt, Commissioner, dissenting:

On July 26, 2001 (July 26 Order) the Commission issued an order which denied a request by DPL Energy, Inc. (DPL) that system upgrade payments should accrue interest.¹ In this order, the Commission reverses its earlier policy on interest and grants rehearing on this issue. I am dissenting on this policy change for several reasons. First, I am not convinced that this order adequately counters the reasons set forth in the July 26 Order for rejecting DPL's position on this issue. Second, the Commission is poised to take up issues related to interconnection procedures shortly in an Advance Notice of Proposed Rulemaking, which is the appropriate forum for resolution of this issue.

The July 26 Order denied DPL's request because it had failed to address the rationale set forth in an earlier order on this issue: that the proponent for interest payments had not shown that the payments made by the generators are held by the transmission providers for any significant length of time.² In fact, the July 26 Order observed that DPL made its first monthly payment installment in October 2000 and construction began in December 2000. Thus, the July 26 Order concluded that AEP had begun using the money relatively soon, rather than simply holding it. That order also explained that the main factors involved in the request for an upgrade - the financed amount and the timing - are in the hands of the entity requesting interconnection, which chooses the interconnection location and decides whether the generating facility will be used for base-load or peaking purposes.

On rehearing, DPL argues that AEP will be receiving a windfall in financing costs, but adds no specific data to support that assertion. DPL asserts that the market dictates where a particular facility is needed. Further, DPL maintains that the primary factor driving the cost of system upgrades is neither the location nor the type of generating

¹American Electric Power Service Corporation, 96 FERC ¶ 61,136 (2001).

²American Electric Power Service Corporation (AEP II), 94 FERC ¶ 61,166 (2001).

facility; it is the current condition of the of the utility's transmission system. I would respectfully disagree with DPL that the location of the generator is not a primary factor driving the cost of system upgrades. I am not convinced that DPL has proffered compelling arguments that counter the rationale use in the July 26 order to reject its proposal on the interest issue.

Furthermore, as was discussed at the October 11, 2001 meeting, the Commission has agreed to issue a proposed rulemaking on the standardization of generator interconnection agreements and procedures. The full Commission was in agreement that this issue was ripe for quick action. There are clearly valid arguments to be made on both sides of the interest argument. In fact, Commission orders on this agenda where this issue is present state that this is an interim policy decision on interest accrual and that we will reconsider this issue in the interconnection rulemaking based on all relevant facts and circumstances. I believe the more appropriate course of action would be to decide this matter in our rulemaking, rather than make an interim policy call. Such an interim approach adds unneeded uncertainty to market participants on this issue.

I fully understand that policy decisions can be made in individual proceedings and I have voted to do so many times in the past. However, the decision on interest payments here affects other proceedings on this agenda. The policy change will now be incorporated into orders in which the issue was not even raised as well as in cases that are set for hearing. In addition, there are technical issues that must be resolved as a result of this policy change. I am not convinced that the majority has fully considered the issues of when interest should begin accruing and when the payment of the interest should begin. The implications of this policy change are ones that should be decided in a rulemaking where the ramifications can be explored more fully.

For the foregoing reasons, I respectfully dissent.

Linda K. Breathitt
Commissioner